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DOE FOR CAROLYN GAY

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TAGS: [PGOV](#) [KREL](#) [NI](#) [ELECTIONS](#)
SUBJECT: NIGERIA'S ELECTION TRIBUNALS - LAST HOPE OR CATCH
22?

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Classified By: Political Counselor Russell J. Hanks for reasons 1.4. (b
& d).

11. (C) SUMMARY. As international and domestic observers hang their hopes for redemption of Nigeria's electoral process on the electoral tribunals and their hearing of appeals, new concerns emerge regarding the timeliness of convening the tribunals and the ability of petitioners to meet the stringent requirements for electoral petitions. According to recently issued instructions for submitting a petition, the full case (including all evidence and written witness testimony in the form of affidavits) must be submitted with the initial petition. Justice Abdullahi of the Court of Appeal has composed a list of tribunal judges, but as of May 11 the judges have not yet been assigned to state tribunals. The stringent rules and uncertainty as to the composition of the tribunals have resulted in a Catch 22 that may well undermine the ability of the tribunals to rule on the disputes. In some states petitions have been refused because no tribunal exists to accept them and petitions by the ANPP and AC to the Presidential Election Tribunal to require INEC to provide information necessary to meet the stringent evidentiary requirement was turned down because no petition has yet been filed. END SUMMARY.

NUTS AND BOLTS OF FILING A PETITION

12. (SBU) As provided in the Constitution, President of the Court of Appeal Justice Umaru Abdullahi issued the requirements for submitting a petition. Though the requirements were published in the Federal Republic of Nigeria Official Gazette on April 4, the Gazette is narrowly distributed and the requirements were not generally available to the public until a UNDP-funded printing was made available in early May. According to the new rules, the tribunals hearings will consist solely of written testimony and evidence -- no oral testimony will be permitted, though written testimony can be read into the record. Upon filing, a petition must be accompanied by a list of all witnesses the petitioner intends to call, written statements on oath from each of these witnesses, and all documentary evidence to be relied upon in the hearings. Petitions which fail to meet comply with the documentary requirement will not be accepted.

¶3. (SBU) Supporters of the new rules say they will speed the process, putting an end to long diatribes by witnesses and lawyers by putting the entire case into written documents. Supporters also point to provisions in the rules that prevent petitioners or respondents from delaying the process by simply not showing up for hearings, not preparing or requesting continuances. Opponents say the requirements are overly burdensome and designed to prevent petitioners from making the 30-day deadline for submitting petitions. As well, opponents point out that the requirement to submit a list of witnesses and written testimony opens the witnesses to threats and intimidation. In the Nigerian context, opponents of the rules say witnesses will be afraid to put their name and statement in writing.

¶4. (C) Per the Electoral Act, Justice Abdullahi has developed a list of judges to be assigned to divisional tribunals to hear federal level cases (National Assembly); however, as of May 11 the judges had not yet been assigned to one of the ten divisional tribunals (Abuja, Kaduna, Jos, Ekiti, Lagos, Ibadan, Ilorin, Port Harcourt, Calabar, and Benin). The list was allegedly leaked. According to IFES program manager Rosemarie McBean (strictly protect), Justice Abdullahi has delayed assigning the judges to specific tribunals in an attempt to curb the tremendous political pressure from all sides that is already being placed on the tribunal judges. In addition, Justice Abdullahi is reportedly still working on obtaining necessary resources and logistical support for the tribunals, including such necessities as generators. (COMMENT: State level tribunals are appointed by the State High Court and the status of these appointments just days before the 30-day period for filing will run out varies from state to state, with not all tribunals yet appointed. END COMMENT.)

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CASES OF CATCH 22 - ARE TRIBUNALS PROGRAMMED TO FAIL?

¶5. (SBU) On May 3, press reported that the Niger State ANPP gubernatorial candidate's petition to the state level tribunal was not accepted based on the fact that neither the chairman nor the adhoc staff of the tribunal had ever shown up to receive petitions. The ANPP called on the Niger State Court of Appeal to direct the tribunal to immediately report to work. (NOTE: Petitions have been successfully filed (and accepted) in some states for some races.) Judge Abdullahi has made public statements that no appointments to federal level tribunals will be made in areas where there are no petitions. COMMENT. This could create a Catch 22 if, as is the case in Niger State, petitions are not accepted if no tribunal is present but, at the same time, no tribunal will be appointed if no petition has been filed. END COMMENT.

¶6. (SBU) On May 10, the Court of Appeal rejected applications from the ANPP and AC seeking an order of the Election Tribunal directing the INEC and all 36 Resident Electoral Commissioners to produce documents needed as evidence for a petition. The Deputy Chief Registrar of the Court of Appeals told journalists the applications were rejected because no petition has been filed to which the applications are linked.

¶7. (C) International and domestic observers have placed their hopes for some redemption of the electoral process with the actions of the tribunals over the next weeks and months. However, at this point, it appears the tribunals may not be the free and fair arbiters, above the political fray, that so many had hoped.
CAMPBELL